APPENDIX

Revenue Act of 1936, c. 690, 49 Stat. 1648:

SEC. 231. TAX ON FOREIGN CORPORATION.

(a) *Nonresident Corporations.*—There shall be levied, collected, and paid for each taxable year, in lieu of the tax imposed by sections 13 and 14, upon the amount received by every foreign corporation not engaged in trade or business within the United States and not having an office or place of business therein, from sources within the United States as interest (except interest on deposits with persons carrying on the banking business), dividends, rents, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable annual or periodical gains, profits, and income, a tax of 15 per centum of such amount, except that in the case of dividends the rate shall be 10 per centum, and except that in the case of corporations organized under the laws of a contiguous country such rate of 10 per centum with respect to dividends shall be reduced to such rate (not less than 5 per centum) as may be provided by treaty with such country.

(b) *Resident Corporation.*—A foreign corporations engaged in trade or business within the United States or having an office or place of business therein shall be taxable without regard to the provisions of subsec-

tion (a), but the normal tax imposed by section 13 shall be at the rate of 22 per centum instead of at the rates provided in such section.

* * * * *

The like numbered provisions of the Revenue Act of 1938, c. 289, 52 Stat. 447, are substantially identical with the foregoing.

Treasury Regulations 94, promulgated under the Revenue Act of 1936:

ART., 231–1. *Taxation of foreign corporations.*—

* * * * *

(b) *Resident foreign corporations.*—

* * *

Whether a foreign corporation has an "office or place of business" within the United States depends upon the facts in a particular case. The term "office or place of business," however, implies a place for the regular transaction of business and does not include a place where casual or incidental transactions might be, or are, effected.

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The corresponding provisions contained in Art. 231–1 of Regulations 101, promulgated under the Revenue Act of 1938, are substantially identical.

77th Cong., 2d Sess., House Report No. 2333, p. 103:

SECTION 207. APPLICATION OF EXCESS PROFITS TAX TO CERTAIN FOREIGN CORPORATIONS

Under existing law, nonresident aliens and foreign corporations are divided into two classes: (a) Those not engaged in trade or business within the United States and not

having an office or place of business therein and (b) those engaged in trade or business within the United States or having an office or place of business therein. Those in class (a) are taxed at a flat rate on fixed and determinable income while those in class (b) are subject to tax at the corporate rate applicable to domestic corporations.

A tendency has arisen, principally on the part of foreign corporations which are substantial holders of the stock of domestic corporations and, occasionally on the part of nonresident alien individuals, to attempt to establish that they have an "office or place of business" within the United States and hence secure the very different tax treatment accorded taxpayers within class (b). Since such corporations and individuals engage in no other economic activities in the United States, they cannot be said to be engaged in trade or business within the United States.

It appears to your committee to be in the interests of good administration to establish but one test (as is done with respect to capital-stock tax in sec. 1200) in ascertaining the classification of foreign entities, namely, whether or not it is engaged in trade or business within the United States. Such amendment narrows sharply the field of uncertainty arising in such cases and removes a possible avenue of tax avoidance to large foreign corporate and other holders of domestic securities.

Accordingly, section 143 amends sections 119 (a) (1), 143 (a) (1), 143 (b), 144, 204 (d), 211 (a) (1), 211 (b), 211 (c), 219, 231 (a), 231 (b) and 251 (e) relating to the tax imposed by chapter 1 by striking out "and not having an office or place of business

therein" or like clause wherever occurring therein. Similar changes are made applicable in section 207 to the excess profits tax imposed by chapter 2 of the code.

77th Cong., 2d Sess., Senate Report No. 1631, pp. 50–51, 135–136:

(pp. 50–51:)

NONRESIDENT ALIENS AND FOREIGN CORPORATIONS

Your committee have agreed to the House provision requiring a nonresident alien or a foreign corporation to be engaged in trade or business within the United States in order to be taxable like American citizens or domestic corporations with respect to the income derived from sources within the United States. Under the present law, this privilege is extended to a nonresident alien individual or a foreign corporation which has an office or place of business in the United States, even though it may not be engaged in business therein. The provision in the House bill is applicable only with respect to taxable years beginning after December 31, 1941. With respect to prior taxable years, the provisions of existing law, which afford such treatment to a corporation having an office or place of business in the United States will continue to apply even though such corporation is not engaged in trade or business within the United States.

(pp. 135–136:)

SECTION 211. APPLICATION OF EXCESS PROFITS TAX TO CERTAIN FOREIGN CORPORATIONS

Under existing law nonresident aliens and foreign corporations are divided into two

classes: (a) Those not engaged in trade or business within the United States and not having an office or place of business therein and (b) those engaged in trade or business within the United States or having an office or place of business therein. Those falling within classification (a) are generally taxed at a flat rate upon the gross amount of dividends, interest, and other fixed or determinable annual or periodical income from sources within the United States. Those falling within classification (b) are subject to tax at the rates generally applicable to individuals and domestic corporations, respectively, but only upon income from sources within the United States.

A tendency has arisen, principally on the part of foreign corporations which are substantial holders of the stock of domestic corporations and, occasionally on the part of nonresident alien individuals, to attempt to establish that they have an "office or place of business" within the United States and hence secure the very different tax treatment accorded taxpayers within class (b). Since such corporations and individuals engage in no other economic activities in the United States, they cannot be said to be engaged in trade or business within the United States.

It appears to your committee to be in the interests of good administration to establish but one test (as is done with respect to capital-stock tax in section 1200 of the Code) in ascertaining the classification of foreign entities, namely, whether or not it is engaged in trade or business within the United States. Such amendment narrows sharply the field of uncertainty arising in such cases and removes a possible avenue

of tax avoidance to large foreign corporate and other holders of domestic securities.

Accordingly, section 162, which corresponds to section 143 of the House bill, amends sections 14 (c), 119 (a) (1), 143 (a) (1), 143 (b), 144, 204 (d), 211 (a) (1), 211 (b), 211 (c), 219, 231 (a), 231 (b) and 251 (e) relating to the tax imposed by chapter 1 by striking out "and not having an office or place of business therein" or like clause wherever occurring therein. Similar changes are made applicable in section 211, which is identical with section 207 of the House bill, to the excess profits tax imposed by chapter 2 of the Code.

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